

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMERICAN FAST FREIGHT, INC. and
HAWAIIAN OCEAN TRANSPORT,
INC.,

Plaintiffs,

v.

NATIONAL CONSOLIDATION &
DISTRIBUTION, INC., a New Jersey
corporation; NEW CONCEPT
DISTRIBUTION, INC., a Nevada
corporation; NCD GLOBAL, INC., a New
Jersey corporation; NCD COMPANIES,
INC., a corporation,

Defendants.

CASE NO. C07-716BHS

ORDER DENYING MOTION
FOR RECONSIDERATION AND
CLARIFICATION

This matter comes before the Court on Defendants' Motion for Reconsideration and Clarification (Dkt. 96). The Court has considered the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. DISCUSSION

Motions for reconsideration are governed by Local Rule CR 7(h), which provides as follows:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

1 Local Rule CR 7(h)(1). Defendants contend that the Court's Order Granting in Part and
2 Denying in Part Defendants' Motion to Compel Discovery (Dkt. 73) constitutes manifest
3 error with respect to Plaintiffs' accounts receivable aging reports, Plaintiffs' board
4 meeting minutes and resolutions, and Plaintiffs' profits margins. Dkt. 96.

5 **A. ACCOUNTS RECEIVABLE AGING REPORTS**

6 The Court denied Defendants' Motion to Compel Discovery (Dkt. 73) as to
7 Request for Production 10, which sought production of Plaintiffs' accounts receivable
8 aging reports. *See* Dkt. 74, Exh. A at 9 (Request 10); Dkt. 94 at 7. The Court denied this
9 request because (1) "Plaintiffs contend that they have already offered the account of all
10 Defendants in this matter," and (2) "Defendants []failed to demonstrate the relevance of
11 aging accounts pertaining to customers not a party to this matter." Dkt. 94 at 7. In moving
12 for reconsideration, Defendants again emphasize that they do not seek production
13 regarding Plaintiffs' other customers. Dkt. 96 at 3. The Court did not misapprehend the
14 Defendants' arguments regarding aging reports naming Defendants but denied the motion
15 because Plaintiffs have already provided this information. The Court's ruling in this
16 regard does not constitute manifest error.

17 **B. BOARD MINUTES AND RESOLUTIONS**

18 The Court denied Defendants' Motion to Compel Discovery (Dkt. 73) as to
19 documents relating to Plaintiffs' corporate status because typical industry practices are
20 not relevant when deciding whether to pierce the corporate form. Dkt. 94 at 6. Defendants
21 moved to compel production pursuant to these Requests 3 and 4 as follows:

22 Requests Nos. 1, 3, 4, 5 and 6 seek corporate information from
23 plaintiffs. Plaintiffs contend that defendants have fraudulently used their
24 corporate structure to violate or evade a duty to plaintiffs. Defendants'
25 corporate structure consists of a parent corporation and a series of
26 subsidiaries that engage in diverse segments of the trucking/transportation
27 business in different geographic locations. Defendants claim that their
28 corporate structure was not set up to defraud plaintiffs, but rather, is of a
type that is typical in the trucking industry. To disprove plaintiffs'
allegations and to support the defendants' defenses, defendants seek
documents regarding plaintiffs' corporate structure to demonstrate that
plaintiffs' corporate structure is substantially similar to the corporate
structure employed by defendants. It will obviously be very difficult for

1 plaintiffs to prove that defendants' corporate structure was fraudulent when
2 it is established that this type of corporate structure is standard in the
trucking industry and is even employed by plaintiffs

3 Dkt. 73 at 5-6. The Court declined to compel production of documents responsive to these
4 requests: "Defendants do not offer, and the Court's research has not revealed, legal
5 authority for the proposition that typical industry practices are relevant when deciding
6 whether to pierce the corporate form." Dkt. 94 at 6. Defendants contend that the Court did
7 not address additional arguments raised in Defendants' reply brief. Dkt. 96 at 3.
8 Specifically, Defendants' reply brief sought production of board minutes and resolutions
9 "that identify solely NCD Global and New Concepts, as opposed to National, as the
10 debtors." Dkt. 87 at 6-7. This argument was raised in Defendants' reply brief and
11 therefore was not addressed. Nevertheless, the Court concludes that the broad, sweeping
12 nature of the requests renders the requests more burdensome than beneficial and denies
13 this aspect of Defendants' Motion for Reconsideration and Clarification (Dkt. 96).

14 **C. PROFIT MARGINS**

15 With respect to Request 19, which seeks information regarding Plaintiffs' profit
16 margins, the Court noted Plaintiffs' concern that named partners working with
17 Defendants' local counsel serve on the board of directors of Plaintiffs' competitor and
18 would be entitled to receive information Plaintiffs consider confidential. Dkt. 94 at 8. The
19 Court noted that Defendants' response did not clarify whether local counsel's named
20 partners would be entitled to receipt of documents responsive to Request 19. The Court
21 therefore encouraged the parties to cooperate to facilitate limited discovery into this
22 subject area in a way that would avoid the unnecessary disclosure of trade secrets.

23 In Defendants' Motion for Reconsideration and Clarification (Dkt. 96), Defendants
24 ask the Court to clarify this portion of the order. The Court's inability to compel
25 production based upon the information before it and the Court's instructions to the parties
26 to cooperate to facilitate discovery responsive to Request 19 are not in conflict.

27 Defendants' "agreement not to show that information to defendants' local counsel" is
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1 information that could have been brought to the Court's attention earlier and is not a
2 proper basis for a motion for reconsideration.

3 **II. ORDER**

4 Therefore, it is hereby

5 **ORDERED** that Defendants' Motion for Reconsideration and Clarification (Dkt.
6 96) is **DENIED**.

7 DATED this 11th day of March, 2008.

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11 BENJAMIN H. SETTLE
12 United States District Judge
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